



BL O/034/06

1<sup>st</sup> February 2006

## PATENTS ACT 1977

BETWEEN

David John Young

Claimant

and

Firstbrook and Doman Limited

Defendant

PROCEEDINGS

Application under section 72 for revocation of patent number EP(UK) 1084613

HEARING OFFICER

D J Barford

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## DECISION

### Introduction

- 1 Patent application number 00307355.8 was filed on 25 August 2000 claiming priority from application number GB 9921782 filed on 16 September 1999. The application was granted on 19 March 2003 as patent number EP(UK) 1084613 ("the patent") under the title " Combined container and drinking vessel".
- 2 An application for revocation was filed by the claimant, Dr David Young, on 21 October 2004 accompanied by a statement which was subsequently amplified. The claimant has applied under section 72(1)(a) on the grounds that the invention is not patentable having regard to certain prior art.
- 3 In response, the defendant, Firstbrook and Doman Limited, filed a counterstatement on 7 February 2005 disputing the claim. Proceedings moved onto the evidence rounds and Dr Young filed evidence in the form of a witness statement. The defendant declined to file any evidence, and the parties have agreed that a decision should be made on the papers.

### The patent

- 4 The patent relates to a combined container and drinking vessel, especially for providing water for a dog during the course of a journey.

5 There are seven claims, of which claim 1 is the only independent claim. This reads (omitting reference numerals):

1. A combined container and drinking vessel, comprising

(i) a closable container adapted, in use, to contain a liquid and having two opposed major surfaces, one of said major surfaces being substantially planar and the opposed surface containing a dished portion, the container moreover having at least one resiliently deformable portion integrally moulded with and forming part of the container ;

(ii) communication means extending between the interior of the container and the dished portion and adapted, in use, to permit a flow of liquid from the container and into the dished portion, so that, when the container is at least partly filled with a liquid, deformation of the resiliently deformable portion forces the liquid, via the communication means, into the dished portion, **characterized in that** the resiliently deformable portion is provided with a plurality of grooves or other indentations to facilitate deformation, and **in that** the resiliently deformable portion is located at one of the container and is operated by downward pressure on the surface of the container which includes the dished portion and which, in use, will be uppermost.

### **The prior art**

6 Dr Young's case is that the invention is not patentable having regard to Registered Design Number 1045670 ("the Design") which was registered on 19 October 1987 in his name, and to patent number GB 1416096 in the name of Bell Products Limited (hereafter "the Bell patent") which was published on 3 December 1975.

7 Dr Young has also referred to a container produced by Bell Products Limited and has filed photographs of it. He states that the container is embossed with *inter alia* a reference to patent application number 2473/73. I note that this is the application number of patent number GB 1416096; and the photographs appear to me to correspond with the drawings of that patent. They do not however appear to add anything to those drawings and in consequence I can limit consideration to the Bell patent.

### **Registered Design Number 1045670**

8 The drawings of the Design show a container with a flat base and a dished top, and a spout closable by a cap - that is to say, in the words of claim 1 of the patent, "a closable container adapted, in use, to contain a liquid and having two opposed major surfaces, one of said major surfaces being substantially planar and the opposed surface containing a dished portion".

9 The drawings show what appears to be a short pipe extending into the dished

portion from the body of the container. This seems to me to constitute “communication means extending between the interior of the container and the dished portion and adapted, in use, to permit a flow of liquid from the container and into the dished portion” as required by claim 1.

- 10 Claim 1 also requires that the container has “at least one resiliently deformable portion integrally moulded with and forming part of the container” and that “the resiliently deformable portion is provided with a plurality of grooves or other indentations to facilitate deformation, .. is located at one end of the container and is operated by downward pressure on the surface of the container which includes the dished portion and which, in use, will be uppermost.”
- 11 Dr Young states that “While my design has no grooves, the function of the grooves is to enable to ‘resiliently to deform’ the container – which mine can do by pressure applied to any part of the surface”.
- 12 I note however that there is no evidence that the container of the Design is resiliently deformable, and in any case, as Dr Young acknowledges, in the Design there are no “grooves or other indentations .. located at one end of the container”. These are essential features of the invention as set out in claim 1 of the patent, they are not present in the Design, and accordingly I conclude that claim 1 of the patent is novel over the Design.

#### **Patent number GB 1416096**

- 13 This patent - the Bell patent - relates to a container for waste engine oil having certain constructional similarities with the container of patent number EP(UK) 1084613. Notably, the container described and illustrated in the Bell patent is designed to contain oil, has a spout closable by a cap and has a flat base and a dished top - that is to say, in the words of claim 1 of the patent, it comprises “a closable container adapted, in use, to contain a liquid and having two opposed major surfaces, one of said major surfaces being substantially planar and the opposed surface containing a dished portion”.
- 14 The dished portion has a drain hole and is formed with ribs which define shallow channels directed towards the drain hole. In use, the container is placed under the engine sump and discharged oil flows onto the dished portion and through the drain hole into the container. The drain hole it seems to me constitutes “communication means extending between the interior of the container and the dished portion” as required by claim 1. Moreover, since oil can be tipped back out through that hole, the drain hole will “permit a flow of liquid from the container and into the dished portion”.
- 15 However, as with the Design, there is no indication in the Bell patent that any portion of the container is resiliently deformable. Although the ribs may be regarded as indentations, they are there to guide the flow of waste oil rather than to “facilitate deformation” as required by claim 1 of the patent. Moreover since the ribs are distributed over the surface area of the dished portion they cannot, it seems to me, be regarded as being “located at one end of the container” as required by claim 1. These are essential features of the

invention as set out in claim 1 of the patent, they are not present in the Bell patent, and accordingly I conclude that claim 1 of the patent is novel over the Bell patent.

### **Inventive step**

- 16 Dr Young has not specifically made a case that claim 1 lacks an inventive step over the prior art submitted. I note however that there is nothing before me to suggest that it would have been obvious to a skilled addressee to incorporate - into either the Design or the Bell patent - the missing essential features, in particular a “resiliently deformable portion .. provided with a plurality of grooves or other indentations to facilitate deformation .. located at one end of the container and .. operated by downward pressure on the surface of the container.” Accordingly I conclude that claim 1 is also inventive over the prior art submitted.

### **Conclusion**

- 17 I conclude that patent number EP(UK) 1084613 is novel and inventive over the prior art submitted by Dr Young and accordingly I dismiss the application for revocation.

### **Costs**

- 18 Both sides seek costs. The defendant has won and so is in principle entitled to costs. I see no reason to depart from the published Patent Office scale, and in accordance with that scale, I award Firstbrook and Doman Limited the sum of £500 to be paid by Dr Young not later than 7 days after the expiry of the appeal period. If an appeal is lodged, payment will be automatically suspended pending the outcome of the appeal.

### **Appeal**

- 19 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

**David Barford**

Deputy Director acting for the Comptroller